BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	
	)	
and	)	PR Docket No. 92-235
	)	
Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services	)	

To: The Commission

COMMENTS OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

Respectfully submitted,

THE AMERICAN TRUCKING ASSOCIATIONS, INC.

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Executive Summary

The American Trucking Associations, Inc. (ATA) is the national trade association of the trucking industry. It has represented the interests of the Motor Carrier Radio Service and served as its frequency coordinator for nearly four decades.

ATA supports true frequency exclusivity --- not the pseudo-exclusivity proposed in this proceeding --- based on the demonstrated requirements of large systems. The plan offered by the Commission is complex, burdensome on the coordinators and subject to abuse. Worse, it does not even result in true, exclusive channel assignments.

If the Commission must add "user fees" to the already existing processing fees and annual regulatory fees, ATA urges that the fee take into account the number of mobiles in use by the licensee. User fees calculated on the basis of the auction value of commercial mobile spectrum ignore the fundamental distinction between private and commercial spectrum.

ATA opposes auctions. This mechanism for near-term revenue enhancement will be a burden on commerce over the long term. Nor is it a fair license-distribution method.

The American Trucking Associations, Inc. (ATA), by its counsel and pursuant to Section 1.415 of the Commission's rules, submits these comments in response to the further rule making portion of the First Report and Order and Further Notice of Proposed Rule Making, FCC 95-255, released June 23, 1995 (the "Further Notice").

Interest of ATA in this Proceeding

ATA is the national trade association of the trucking industry. Its membership, whose interests it represents, consists of approximately 4,500 individual trucking companies and the 51 state trucking associations and their more than 35,000 member carriers.

The Motor Carrier Radio Service (MCRS) comprises companies who provide a common carrier or contract transportation service of property or passengers. MCRS frequencies in the 450 MHz and the 470-512 MHz band are shared by property and passenger transportation companies. ATA has served as the frequency coordinator for the Motor Carrier Radio Service since March, 1956. For nearly 40 years, ATA has insured the orderly implementation of the Commission's licensing policies and regulations.

As the appointed representative of the motor carrier industry, ATA has represented the collective interests of Motor Carrier Radio Service licensees before the Commission. ATA has been a consistent participant in the present proceeding, going back to the initial Notice of Inquiry in PR Docket 91-170, which prefaced the present rule making proceeding.

The trucking industry is the lifeblood of commerce in the United States, accounting for 5.4% of the Gross Domestic Product. Trucks annually haul over 5.1 billion tons of freight. There are approximately 323,000 for-hire trucking firms in the United States, including over 59,000 interstate carriers. Together these firms operate over 16 million commercial vehicles. The coordination and control of this distribution system depends upon private radio systems licensed in the Motor Carrier Radio Service.

Two way communications by means of radio are vital to the safety of life and protection of property. These vital communications functions include:

- dispatch
- safety supervision
- roadside assistance

- accident, weather, traffic and road condition reporting and information retrieval
- monitoring hazardous or high value cargo
- coordination of the secure movement of cargo and equipment in terminals, yards and airport ramps
- "just in time" delivery to minimize storage costs and exposure to theft

Passenger carriers also use many of the above functions to coordinate mass transit systems, community action, dial-a-ride, and transportation of senior citizens and persons with disabilities to and from medical facilities.

COMMENTS

ATA's comments herein will be limited to only those issues raised in the further rule making section of the Further Notice. Two other aspects of this proceeding that are of vital interest to ATA are being treated separately. As a member of the Land Mobile Communications Council, ATA has voiced its concerns regarding certain aspects of the rules adopted in the report and order section of the Further Notice.[1/] Also, ATA will comment separately with regard to the consolidation of the Private Land Mobile Radio Service

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1/ "Petition for Reconsideration and Clarification," filed by the Land Mobile Communications Council on August 18, 1995.

groups into broad categories, served by competing coordinators.

Exclusivity Should Be Based on Loading

The Commission has determined[2/] that the Private Land Mobile Radio bands, which are used by more than half a million licensees, who operate over 12 million mobile units, are highly congested and that these radio services are in danger of deteriorating to unacceptable levels.

Part of the solution to the congestion problem has already been adopted by the Commission in this proceeding: the creation of four times as many channels by splitting existing channels into fourths and requiring new radio equipment to be capable of operating on the narrowband channels. ATA submits that a natural and expeditious migration to these new channels will take place simply because companies will not be able to continue to meet their needs with the older equipment. Nevertheless the Commission seeks to give users incentives to migrate to these new, narrowband channels.

2/ See ¶111 of the Further Notice.

The first incentive is the prospect of "exclusivity." Not actual exclusivity, however, but "shared exclusivity." This inherently contradictory term is so misleading that ATA refuses to accept it. The concept is more accurately termed "pseudo-exclusivity."

The concept is simply this: if everybody who currently shares a frequency in a given area (regardless of radio service) can agree to buy expensive, new, narrowband equipment, they will be permitted to *continue to share* a narrowband frequency in the same area, but they will be able to keep any newcomers off of that frequency. They will also be able to keep newcomers off of their current wideband frequency while they are in the process of changing out their equipment. Once converted, they would have the right to lease excess capacity on their frequency to others.

From the perspective of the users, this plan offers no real incentive to replace perfectly good equipment with expensive new equipment. At the end of the process, they are still sharing their frequency. Nor is there reason to believe that there are any potential new licensees to worry about. New licensees certainly would be more attracted to the three vacant narrowband channels that would be created by the parties to the pseudo-exclusivity agreement when they

migrate from their old wide-band channel to the new narrowband channel, than they would be to an already-shared narrowband channel.

Incentives to migrate to the new narrowband equipment and channels will come from internal communications requirements, not from pseudo-incentives. ATA supports the concept of frequency exclusivity --- that is, **true** exclusivity, which would enable a company not to share a frequency. Relatively large systems, systems that play an unusually critical safety of life role, and systems that require dedicated channels, such as trunked systems or certain digital technologies, can justify exclusive frequency assignments. Quite simply, the coordinators for each service can judge whether frequencies should be shared or held exclusively based on such objective measures as the applicant's mobile loading, as demonstrated by narrowband units in use or on order. This approach is far superior to the Commission's proposals for long-term freezes and monitoring of implementation progress (with no penalties for non-performance).

Authority to lease excess capacity on exclusively-held frequencies is not the incentive that the Commission seems to believe it is. Private users generally are not

interested in becoming commercial mobile service providers. Generally, private users will not apply for more spectrum than they need to support their own competitive operations.

From the standpoint of the frequency coordinators, the Commission's plan is topheavy with burdensome procedures and obligations that the Commission itself would never undertake if it were performing the task. For example, the plan depends upon monitoring and enforcement of the pseudo-exclusivity agreements, for which the coordinators are neither equipped nor capable of performing with present staff and equipment.

Although there may only be "two to four" radio service groups, the Commission contemplates the continuing existence of multiple, competing coordinators. These coordinators will be required to establish procedures for uniform, simultaneous implementation of possibly thousands of initial 90-day temporary freezes that will begin the pseudo-exclusivity process. This will add a step and additional costs to the frequency coordination process since each coordinator will be required to check with or respond to other coordinators to see if any particular frequency in a specific geographic area is under a freeze.

If the participating licensees are successful in reaching unanimous agreement, the coordinators must then become the public repository of potentially thousands of agreements. This will require the establishment of storage and retrieval systems for public access to these documents.

Since no application could be accepted when a frequency or region is subject to such an agreement, inter-coordinator application processing systems will also be required.

Finally, although the unanimous pseudo-exclusivity agreement must contain a plan for a transition to narrowband equipment within 5 years, the rules are silent as to the penalty for not reaching the goal or for only partially reaching the goal. This places the coordinators in a de facto enforcement role, without any authority to fashion a remedy. Moreover, it leaves open the possibility that a licensee or licensees could enter into a sham pseudo-exclusivity agreement with no intention whatsoever of spending a dime on new technology investment. In the meanwhile, however, they will enjoy 5 years of pseudo-exclusivity on their existing frequency.

In short, the Commission's pseudo-exclusivity plan as laid out in proposed §§ 90.190 - 193, depends entirely upon

a burdensome and overly-bureaucratic tangle of filing requirements and recordkeeping. It will add to the cost of licensing and over the long term it is doomed to either fail or be ignored.

User Fees Must Be Fair and Related to Spectrum Use

If the Commission is seeking to create a positive incentive to encourage the transition to narrowband equipment by offering some form of exclusive licensing, it is also seeking to create a "negative avoidance" incentive by proposing spectrum use fees based on the commercial market value of spectrum in the geographic area of any given user.

As pointed out above, the licensees in the already crowded MCRS bands need no monetary incentives to induce them to migrate to frequencies where they can better meet their communications requirements. If, however, the Commission is compelled by legislation to impose some level of spectrum use fee (in addition to the application processing fees and annual regulatory fees that are already in effect), that level cannot validly be determined by

reference to the amounts paid in recent spectrum auctions for commercial spectrum.[3/]

The value of spectrum to someone who will use it for commercial purposes is not the same as its value to someone who is not in the communications business but who uses communications in support of a business such as transportation of people or goods. Unless the Commission is prepared to say that the private use of spectrum no longer has a place in this country's telecommunications regime, the Commission must recognize this fundamental distinction and determine the value of the two different classes of spectrum accordingly.

If the Commission insists on determining the value of spectrum based on non-private, commercial use models, then ATA suggests that the model be that of over-the-air television spectrum. Broadcasters pay no fee for the use of their spectrum, despite the fact that they derive all of their substantial revenues from its use. If spectrum is a commodity and the "opportunity cost" of spectrum is a

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[3/] We note in passing that in FY 1994, licensees paid a combined fee of $80.00 per license. In FY 1995, the fee was reduced to $60.00 per license. It seems incongruous to be decreasing existing fees on the one hand and proposing new and additional fees on the other.

constant that applies to all types of users, there can be no islands of privilege.

ATA members could accept a spectrum use fee that has been validly determined in the private use context. In that regard, an important element in the determination of any user's fee must be consideration of the number of mobiles operated by that user on any given frequency.

It would not be fair to charge a licensee with only one or two mobiles the same user fee as another licensee on the same frequency who has 40 or 50 mobiles. The Commission must factor in to the spectrum use fee determination the number of mobiles operated by the licensee, otherwise there would be no reward for spectrum efficiency.

The Commission should also factor in the licensee's area of operation. Clearly a large coverage territory impacts more spectrum, in terms of possible frequency re-use, than a smaller coverage territory.

The appropriate factors for determination of private land mobile spectrum use fees clearly differ from those articulated by the Commission in the Further Notice. Accordingly, the Commission should withdraw its current

proposal and initiate a new proceeding following the enactment of enabling legislation when and if that occurs.

ATA Opposes Auctions

This proceeding began as an effort to find a way to *enhance* the existing land mobile spectrum resource without *enlarging* it. As a result of the $8 billion raised in the IVDS and narrowband and broadband PCS auctions, the proceeding has turned into a hunt for more spectrum to auction at the *expense* of the land mobile community.

Every product shipped by land in America has a cost component related to telecommunications. That cost is passed on to the American consumer in the cost of goods sold. If trucking companies have to bid for their spectrum (or pay large spectrum use fees) these increased costs will be ultimately borne by the American consumer. In other words, the infusion of non-tax revenues to the public treasury derived from auctions will ultimately be paid out over the long term by the public in higher prices for goods and services. It is a zero-sum outcome which is to be avoided if for no other reason than its regressive effect of shifting the payments to the consuming public without regard to income status.

Auctions in the context of private use systems also have the anti-competitive effect of favoring the deep-pocketed interests. Spectrum is a public resource that belongs to everyone. Spectrum users, and especially non-commercial spectrum users, should have the same opportunity to obtain and use this resource without regard to their financial resources. Yet private spectrum auctions would favor the richest companies and disadvantage small businesses.

As was demonstrated by the PCS auctions, commercial communications companies have greater financial resources than trucking companies or passenger carriers. It is entirely possible that commercial communications companies could outbid MCRS companies for spectrum that was formerly theirs, then turn around and sell communications service to the displaced MCRS companies, who formerly paid no airtime charges. This too, would show up in the consumer price of goods and services.

Once again, ATA calls upon the Commission to recognize the distinction between commercial-use spectrum and private-use spectrum. Auctions have no place in private-use spectrum.

CONCLUSION

ATA is concerned that the Commission has lost sight of the complex needs of its traditional, land mobile constituency for adequate, internal communications capability. The Commission failed to give the original 800 MHz/trunked SMR concept a chance to take hold and provide a viable alternative to shared, dispatch communications. This, in itself, could have relieved much of the congestion that gave rise to this proceeding.

Now the Commission is failing to consider whether ESMRs and PCS systems, in their quest for customers, might ultimately fill the communications requirements of many businesses, thereby alleviating much of the land mobile congestion. Instead, the Commission is following a simplistic and one-dimensional urge to create still more commercial spectrum to auction. The only beneficiary in that scenario is the Commission itself, not the industry which it is bound to support under Section 1 of the Communications Act.

This one-size-fits-all approach ignores industry's requirements for custom-fashioned solutions. The motor carrier industry understands the need to be spectrum

efficient. The motor carrier industry welcomes an opportunity for exclusive licenses. However, the implementation of these goals, as proposed in the Further Notice, is flawed. The source of the flaw is the coupling of spectrum user efficiency with federal revenue enhancement.

ATA therefore urges the Commission to re-think its proposals, as suggested in the above comments, by proposing channel exclusivity based on the number of mobiles in service, spectrum use fees based on private spectrum use concepts, and abandoning the concept of spectrum auctions in the private use environment.